

# Riverside County MS4 Tentative Order No. R8-2010-0033

## Comments/Responses 2nd Draft MS4 Permit October 22, 2009

Item No.	Parties & Page Numbers	No. / Topic	Comment (most comments are verbatim from the comment letters or emails)	Response
	<b>2nd Draft 10/22/2009</b>	<b>MS4 Permit</b>	<b>Comments/Responses</b>	
135	CICWQ, Pg. 2	Finding No. II.G.15	We recommend striking the EIA reference in Finding No. 15.	Agreed; the use of EIA as a performance standard has been deleted from the draft Order.
136	CICWQ, Pg. 2	XII.E.2	There is no evidence to suggest that the exclusion of properly engineered treat and release LID BMPs in the LID standard will lead to better water quality on a long-term pollutant removal basis. Moreover, we are concerned that economic feasibility must be considered when determining the implementation feasibility of LID BMPs (see Footnote 53). This is especially important when the feasibility of implementing onsite harvest and use systems is considered relative to the availability of a recycled water supply. Footnote 53 addresses the feasibility analysis process and suggests that feasibility determinations will only be technical in nature and not consider economics. We strongly suggest that economic considerations be expressly included in the LID BMP feasibility analysis process.	We agree that infiltration, onsite capture and use and evapotranspiration are the most effective LID BMPs. Bio-treatment is only allowed if those systems are not feasible at a particular site. A properly designed and maintained bio-treatment system should be capable of removing pollutants from urban runoff. A bio-treatment system may not be capable of fully addressing the hydrologic conditions of concern. Economic feasibility should be an integral part of any feasibility analysis for LID BMPs.
137	CICWQ, Pg. 3	XII.E.	Within Section XII.E, there is a section numbering problem beginning at Section XII.E.6, with Section XII.E.6 repeated twice. All subsequent sections require re-numbering for accuracy and any citations to those sections corrected.	The section numbers and the references have been corrected.
138	CICWQ, Pg. 3	XII.G.1.	Economic feasibility must be expressly included during the process to "develop technically-based feasibility criteria for project evaluation." To ignore economic considerations when developing alternatives and in lieu programs that result from the establishment of feasibility criteria is a glaring error.	Please note that this section does include economic consideration; it states, "...or if the cost of BMP implementation greatly outweighs the Pollution control benefits".
139	Contech, 1	Appendix 4. Glossary	The current definition of Low Impact Development (LID) given within Appendix 4 on page 9 of 19 is unacceptable and narrowly defines LID to only those practices that infiltrate, harvest and use, or evapotranspire water onsite. The LID definition in the Glossary for the July 23, 2009 Draft Permit should be restored and used, as it accurately reflected the principles of LID and the range of possible practices supporting application of those principles.	The definition has been modified.
140	Contech, 1	XII.D.3.a	Change this section to require that the discharge of pollutants be reduced to the "maximum extent practicable" and eliminate references to BAT and BCT standards. Justification: The Best Available Technology standard is commonly interpreted as a "spare no expense" standard that is applied without regard to cost implications. It has been applied in the regulation of point source discharges such as wastewater treatment plant effluent but is not intended to apply to storm water mitigation. The lack of financial consideration is in direct opposition to the Clean Water Act standard of Maximum Extent Practicable which is commonly interpreted as requiring application of the most effective treatment controls that are also financially feasible. The current permit language at the very least should be revised to read "best available technology economically achievable" to allow consideration of economics. However, the framework for assessing economic achievability under this standard or the "Best Conventional Technology" standard are not well suited to non-point controls.	See revisions in the October 22, 2009 draft.
141	Contech, 2	Section XII.E.2	Replace the word "biotreat" with "treat with BMPs demonstrated in the field to be highly effective for primary pollutants of concern, and at least moderately effective for secondary pollutants of concern expected to be generated on site."	See revisions in the October 22, 2009 draft. The draft Order requires the Permittees to ensure that the bio-treatment systems are properly designed and maintained. The Permittees are also required to include the specific design, operation and maintenance criteria for bio-treatment systems in the WQMP.

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142	Contech, 2	Section XII.E.4.h	Replace "reuse" with "use" in this section and throughout the permit. The word "reuse" is borrowed from wastewater reuse discussions and is not appropriate for storm water harvest applications. Harvested storm water has no prior use.	Permit language has been modified; see the October 22, 2009 draft.
143	Contech, 2	Section XII.E.7.c	Replace this entire section with a BMP performance standard. For example "BMPs that have been demonstrated to be highly effective in reduction of primary pollutants of concern expected on site and are at least moderately effective in reducing secondary pollutants of concern expected to be generated on site. Upon permittees determination that such treatment controls are infeasible, the portion of the design storm that is not retained or adequately treated shall be treated using treatment controls as described in Section XII.G." As written, a BMP with incidental infiltration or evapotranspiration and little effect on pollutants of concern could be approved. Alternately, the use of non-vegetated BMPs, for example sub-surface media filters would trigger participation in in-lieu programs even if those BMPs are demonstrated to be more effective for pollutants of concern like sediment, trash, nutrients and bacteria. This violates the maximum extent practicable standard and common sense.	See revisions in the October 22, 2009 draft. Infiltration, harvest and use, and evapotranspiration are LID BMPs that address most pollutants in urban runoff and hydrologic conditions of concern. A properly engineered and maintained bio-treatment system can only be considered if the other LID BMPs mentioned above are not feasible. Any portion of the design capture volume that is not treated using LID BMPs should be treated in accordance with the approved WQMP using conventional treatment control methods. We agree that the bio-treatment systems do need some maintenance. The preference would be to have native vegetation so as to minimize irrigation requirements. Propriety non-vegetated filters could be useful to treat some of the pollutants of concern in urban runoff. The Permittees have the option of proposing "runoff and pollutant reduction" techniques during the next revision of their WQMP.
144	Contech, 3		<p>The intent of this section seems to be to encourage the use of vegetated BMPs since some runoff reduction is assumed to occur. However, most landscape based BMPs are regularly irrigated and may actually generate more runoff volume than they prevent either through irrigation overspray, or loss of irrigation water through under drains. Regular irrigation also effectively fills the void space in soil which is then unavailable for runoff reduction. Non-vegetated surface filters would avoid both of these issues, would use no potable water and would perform similarly to their vegetated counterparts. Unfortunately, as written, this section does not allow the use of non-vegetated BMPs.</p> <p>A more reasonable approach to treatment control prioritization has been taken in the Chesapeake Bay area where "The Runoff Reduction Method " has been developed by the Center for Watershed Protection. In simple terms, it evaluates the effectiveness of BMPs based on both their ability to reduce the concentration of pollutants in stormwater and their ability to reduce runoff volumes. For example if a swale reduces runoff volume by 20% and reduces sediment concentrations by 50%, the total sediment load removal attributable to the BMP would be 60%.</p> <p>Applying this method of BMP evaluation would effectively prioritize BMPs that reduce runoff, but not blindly and potentially at the expense of better performing but non-vegetated BMPs.</p> <p>The equation used by the method calculates the "total removal" attributable to a BMP as follows:</p> <p>TR=RR + (100-RR) *PR Where:  TR = Total Removal  RR = Runoff Reduction  PR = Pollutant Removal</p>	
145	Contech, 3	Section XII.G.1	Please clarify the term "technically based feasibility criteria". This would appear to exclude any consideration of financial feasibility which can only be interpreted as application of a more restrictive standard than MEP. With a large enough budget and low enough development density, total retention of all water is probably technically feasible for all projects. This section appears to disregard any fiscal consideration whatsoever.	Please note that this section does include economic consideration; it states, "...or if the cost of BMP implementation greatly outweighs the Pollution control benefits".
146	Contech, 3	Section XII.G.1	Please clarify the timing of waiver submittal in the last section of this section. The documents referenced must be submitted within 30 days of what?	Language changed to add "30 days prior to Permittee approval".

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147	Inland Empire Waterkeepers, Nov. 20, 2009; pg. 2	Section XII.G.4	Please clarify the intent and possible components of the water quality credit system.	The intent of the proposal is to facilitate development of environmentally friendly (e.g., work-transit-oriented projects) and beneficial projects. The water quality credit system is designed to achieve water quality improvements based on the pollutant trading system that USEPA developed. For example, if a brown field is developed whereby pollutant loadings from the site are reduced (polluted runoff from the site and polluted infiltration into the groundwater are reduced) below the pre-development conditions, a water quality credit could be assigned to this project. The water quality credit system should be such that there is no net increase in the pollutant loadings due to the overall developments. If the Permittees want to establish such a system, their proposal should go through the public review process. The details and the components of such a system will have to be included in any proposal for a water quality credit system.
148	Inland Empire Waterkeepers, Nov. 20, 2009; pg. 2	Section XII.B.3.c-d	<p>Waterkeeper is concerned the substantial modification of this section weakens the Permit by providing Permittees with insufficient guidance on preferred land use planning. Riverside County's comment letter dictating their "technical, policy and legal concerns," including their assertion the Regional Board overstepped its legal authority by "specifying the composition of membership of the TAC" and "directing] land use requirements" is shortsighted reading of this otherwise important section to the Permit.</p> <p>Previous language provided Permittees with guidance on preferred techniques to responsibly monitor and improve water quality throughout their own county by extension the entire Santa Ana River Watershed. The removal of this language is a detriment to the effectiveness of the permit.</p>	The draft Order specifies the basic elements that should be included in the Watershed Action Plan and provides sufficient flexibility to accommodate local programs. The Watershed Action Plan will be a public document subject to review and comments by the public before it is approved by the Regional Board or the Executive Officer.
149	Inland Empire Waterkeepers, Nov. 20, 2009; pg. 2	Section XII.E.4	<p>Waterkeeper strongly encourages the Regional Board to revise this worrisome section to reflect the importance of LID and its effective implementation. Currently, Permittees responsibilities are limited to "identifying] barriers for [the] implementation of LID." Once those barriers have been identified, Permittees are merely encouraged to revising those barriers to promote "green infrastructure/LID techniques."</p> <p>If adopted as written, the principal barriers to LID implementation are likely to remain upon the issuance of the Riverside County's fourth MS4 permit. The coupling of a mandatory requirement for Permittees to review barriers to LID implementation with a permissive clause merely requesting that Permittees "should consider revising" those "ordinances, codes, building and landscape design standards" which act as those barriers fails to responsibly respond to the reality of cost-effective and environmentally proven LID technologies as a tool in water conservation and groundwater recharge in the third year of a multi-year statewide drought.</p> <p>Waterkeeper encourages the Regional Board to revise Section XI.E.4 for clarity and continuity to <i>require</i> the revision of "barriers for [the] implementation of LID" after they have been identified by the Permittees.</p>	Please see the revised language in Section XII.C.1 of the December 15, 2009 draft. The Permittees are required to develop a technically based feasibility analysis during the next revision of their WQMP. If the preferred LID BMPs cannot be implemented, they are required to conduct the feasibility analysis prior to approving alternate control measures at the project site. The draft Order at Section XII.C.1 requires the Permittees to identify and eliminate any barriers to implementation of LID BMPs and HCOC concerns.
150	Inland Empire Waterkeepers, Nov. 20, 2009; pg. 2	Section XII.E.4.i	Waterkeeper reiterates its suggestion that the Regional Board should revise this subsection by defining "narrow streets." EPA document "Managing Wet Weather with Green Infrastructure: Green Streets" defines "narrow streets" and is used in footnote 80 of the Tentative San Bernardino County MS4 Permit. Waterkeeper is unaware of alternative definitions to this term, however, if the Regional Board intends to utilize the definition as it is understood in the EPA document then it should directly reference that document to provide Permittees with proper notice. Similarly, all government or industry manuals produced and relied upon for the development and enforcement of the adopted Riverside County MS4 permit should be clearly identified within the permit to provide guidance to regulated entities and the public alike.	The draft Order provides the option of using the USEPA guidance or developing their own templates for road projects. Within a new development, the road projects are an integral part of the overall project and should be addressed in the WQMP for the project. Special requirements have been added for Municipal Road Projects in Section XI.F.

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151	Inland Empire Waterkeepers, Nov. 20, 2009; pg. 2	Section XII.E.8.c.	Waterkeeper reads the Permit as requiring a site to use LID BMPs to retain or biofiltrate onsite the runoff from a design storm event. As a result, the Permit allows biofiltrated runoff to count toward LID requirements, which is a requirement both less stringent and less protective of water quality than contained in other Permits recently adopted in California, which either do not allow for biofiltration to count towards a site's LID obligations (see NPDES Permit No. CAS004002), or allow for use of biofiltration to meet a site's LID obligations only in cases of demonstrated technical infeasibility of onsite retention. As currently drafted, the Permit would conceivably allow a site to discharge all of its stormwater to the MS4 system through biofiltration, without any requirement that the site retain water onsite, or that the site undertake any offsite mitigation of the volume of water that is biofiltrated.	The draft Order clearly specifies the preferred order of LID BMPs. If bio-treatment is to be used, it can only be allowed if other preferred LID BMPs have proven to be infeasible at the site. This is consistent with most other Phase I MS4 permits adopted within the state, including the recently adopted South Orange County Permit (Region 9) and the North Orange County Permit (Region 8).
152	Inland Empire Waterkeepers, Nov. 20, 2009; pg.3		As identified by other Permits recently adopted in the state, biofiltration is not as effective a means of reducing pollutant load as onsite retention, nor does biofiltration ensure downstream impacts such as flooding or erosion will be reduced to the same extent. As a result, allowing biofiltration to substitute for use of onsite retention practices such as infiltration, evaporation, or capture, which do not allow for runoff from the 85th percentile storm to leave a site at all, falls short of the maximum extent practicable standard required by the Clean Water Act. Other jurisdictions have developed policies that reflect the strengths of retention and the shortcomings of biofiltration. For example, Philadelphia, West Virginia, and Anacostia (Washington D.C.) have adopted standards that infiltrate, use onsite, or evaporate all precipitation except that which exceeds a specified storm volume. (There should be full cites to these Permits in our previous North OC letters). More locally, the Los Angeles Regional Water Quality Control Board recently approved NPDES No. CAS00402, the MS4 permit for Ventura County and its incorporated cities. That permit does not, like the current draft Permit, allow biofiltration BMPs to count toward LID obligations. Rather, the Ventura permit requires that a project employing biofiltration must compensate through mitigation measures. We recommend that you revise your Permit in a similar manner so that a site must both demonstrate technical infeasibility of onsite retention practices prior to use of biofiltration, and must then mitigate offsite any reduction in the removal of pollutants resulting from the use of biofiltration instead of retention-based BMPs.	We agree that infiltration, onsite capture and use and evapotranspiration are the most effective LID BMPs. Bio-treatment is only allowed if those systems are not feasible at a particular site. Please note that this approach is consistent with the North Orange County and the South Orange County MS4 permits.
<a href="#">153</a>	Inland Empire Waterkeepers, Nov. 20, 2009; pg.3	Section XI.G.3	Waterkeeper strongly encourages the revision of this section to ensure that if a waiver is granted then an urban runoff fund "shall" be established even if the Permittees failed to collectively or individually propose to establish such a fund. The failure to establish the fund should preclude the issuance of waivers, otherwise the parties seeking a waiver could avoid BMP installation without taking into account the costs avoided. In other words, the issuance of a waiver should automatically trigger the establishment of urban runoff fund.	The establishment of an urban runoff fund remains an in-lieu option. Since there are other options for the in-lieu program, the draft Order does not include it as a mandatory requirement.

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154	Inland Empire Waterkeepers, Nov. 20, 2009; pg.4	Section XI.G.4	Waterkeeper is concerned over the likelihood that the "obligation to install structural BMPs at new development" if the "BMPs are constructed with the requisite capacity to serve the entire common project" will actually be achieved. During periods such as this current economic downturn there is a real threat that common plan developments begin construction with the intent to have structural BMPs satisfy the entire project's obligations that are never actually constructed because the common development stalls and is either not completed or placed on indefinite hiatus. These situations allow the possibility of new developments which would fall within the requirements of this MS4 permit to avoid actual construction of required BMPs because the development ceases construction and those houses already built will be without the otherwise required BMPs. Likewise, Waterkeeper restates our concern with WQMP's that defer installation of permanent treatment BMPs until such time that the Home Owner's Association (HOA) can provide them. We feel strongly that this caveat should not be allowed and that it is the responsibility of the project proponent to complete the project in its entirety. It could be years until the HOA is developed and fully capitalized so we urge the Regional Board to close this loophole with this permit revision.	The draft Order requires the Permittees to ensure that the regional treatment control BMPs are operational prior to occupation of any new development or significant redevelopment project sites tributary to the regional treatment control BMP; see Section XII.G.3 of the December 15, 2009 draft.
155	City of Riverside	Recommendation	<p>The latest iteration of the Permit is a radical departure from the first draft of the permit as well as the trend in regional MS4 permits statewide. In light of the critically important nature of this permit both independently and in connection with other permits throughout the watershed Waterkeeper recommends an extension of the comment period and the scheduling of a stakeholder meeting to discuss foundational divergences in the direction of MS4 permits in the Santa Ana River watershed.</p> <p>The extension of the comment period and the scheduling of a stakeholder meeting would likely necessitate the postponement of the scheduled hearing date on this specific permit.</p>	Agreed; the public hearing to consider this Order has been postponed to the January 29, 2010 Board meeting.
156	Lake Elsinore & San Jacinto Watersheds Authority; Pg. 1	General	As a discharger under this Phase I permit, the City will be significantly impacted by the additional requirements outlined in this permit. Over the last five years, the annual cost of compliance for the City's iterative implementation has increased over 150%, to over \$5 million. The Draft Permit is expected to add over \$1 million for the development of new plans and procedures, plus an additional several hundred thousand dollars each year to implement the new procedures...This fiscal responsibility bears particularly heavy during the current recession, which, according to State budget analysts, is not expected to level State revenues until possibly 2014 or 2015. With unemployment rates over 15% and an expanding workforce, as well as a General Fund decline expected to be over 12% from less than two years ago, the City supports continuing the iterative BMP implementation process to determine compliance with all MS4 requirements, including Permittee activities and TMDL regional efforts. The City also supports ongoing task force efforts, as long as the efforts continue to maximize economies of scale and the outcomes can be considered part of regional compliance in lieu of compliance at each individual discharge of an MS4.	The Regional Board is aware of the current financial crisis facing the Permittees and other entities. Most program elements were developed during the first, second and third term of this Permit. For new or improved program elements, some of the schedules have been revised to provide additional time for the Permittees. Please see revisions in the December 15, 2009 draft to the TMDL sections which provides the Permittees the option to comply with the WLAs through development and implementation of a comprehensive plan. A number of recommendations from the TMDL taskforces have been incorporated into the draft.
157	Lake Elsinore & San Jacinto Watersheds Authority; Pg. 1	The Permit Would Disqualify MS4 Permittees for Grant Eligibility	The Regional Board has been a long-time supporter of the Task Force approach and the Lake Elsinore & San Jacinto Watersheds Authority in supporting grant funding to assist implementation of measures to protect and enhance beneficial uses in the lakes. However, the proposed inclusion of TMDL compliance actions in the NPDES permit may disqualify the Task Force members from eligibility for grant funding for in-lake water quality projects. This is evidenced by USEPA 319 (h) grant provisions which indicate that these funds cannot be used for activities under or a part of the NPDES permit. As an example, Section VI.D.2.e would make the Canyon Lake Sediment Treatment Plan, currently an option of the LE/CL TMDL, mandatory.	Please note that the December 15, 2009 draft of the Permit incorporates a number of recommended changes from the TMDL taskforces. The draft Order recognizes the efforts by various taskforces to comply with the WLAs.

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158	Lake Elsinore & San Jacinto Watersheds Authority; Pg. 2	The Permit Would Reduce Needed Flexibility	The latest draft of the MS4 Permit includes tables from the approved TMDL implementation plans that show interim and Regional Board approved final deliverable dates expected to attain the beneficial uses at the lakes by the TMDL target deadlines. By placing these tables in the MS4 Permit, the Task Force anticipates that the deliverables and their deadlines would become fixed, thus reducing the flexibility envisioned by the Regional Board and the Task Force under an adaptive management approach. In first proposing these interim deliverables, it was with the understanding that these deliverables dates could be modified from time to time based on new data and science being collected at the lakes and the watershed under an iterative process. Watershed based nutrient controls only function during rain events, and can never be sufficient to control the volumes of water and resultant nutrient loads that are produced by large rain events. Proper management of the lakes will require BMPs that can function year-round – and continually address the sources of impairment. In-lake management measures are likely to be more successful as they can control the underlying cause of impairments on a daily basis.	Please see changes to the draft Order; December 15, 2009 draft. A number of stakeholder meetings were conducted to discuss these issues and based on recommendations from the taskforces and other stakeholder groups, the TMDL section of the draft Order has been revised.
159	Lake Elsinore & San Jacinto Watersheds Authority; Pg. 3	Numerical Effluent Limitations Would Undermine Task Force	By attempting to enforce waste load allocations for the MS4 Permittees and other stakeholders through additional outfall based monitoring and compliance determinations that go beyond the compliance programs developed through the TMDL Implementation Plan, the Regional Board may inadvertently undermine the Task Force approach. Since the watershed is large and there are many outfalls, determining any specific dischargers actual load from monitoring data is economically and technologically infeasible. Further, the source of nutrients that are measured in outfall monitoring data is difficult to trace. Nutrients measured at outfalls are likely to represent the contribution of multiple TMDL dischargers including state and federal agencies (schools, CalTrans, etc), agricultural and CAFO operations, MS4 dischargers (possibly multiple cities), etc. This may promote infighting between the stakeholders regarding relative contributions of nutrients, stall Task Force progress, and divert resources from addressing the actual impairments in the lakes to address individual compliance with the waste load allocations. This may also lead some Task to intercept and divert flows from the lake to meet upstream compliance and thereby further exacerbate lake water quality so dependent on upstream flows to be maintained. Calculating existing loads, and then determining compliance by allowing the dischargers to take credit for load reductions that result from BMP implementation in the watershed or at the lakes is a much more effective way to ensure progress and compliance with the TMDL and is consistent with the plans and schedules that have been approved by the Regional Board to date.	Some of the recommendations from the TMDL taskforces have been incorporated into the December 15, 2009 draft. Please note that if the TMDL taskforce develops and the Regional Board approves other outfall monitoring locations, this Order can be revised to accommodate other monitoring locations approved by the Board.

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160	Riverside Board of Supervisors; 11-17-09, Pg.2	Recommendation	<p>To facilitate implementation of in-lake controls and continued viability of the adaptive management approach, the Task Force recommends that:</p> <ol style="list-style-type: none"> <li>1. Reference to Canyon Lake activities in the MS4 permit be deleted to avoid disqualifying the MS4 Permittees for eligibility to apply for EPA 319 grant funds;</li> <li>2. All interim deliverable tables for the TMDL in the MS4 permit be deleted and that only the TMDL implementation plans and studies be referenced as a narrative in the MS4 permit. The Task Force has worked cooperatively and responsively in all TMDL deliverables to date and when delays have arisen in interim deliverables, these delays have been communicated to Regional Board staff with a full explanation.</li> <li>3. The TMDL provisions in the MS4 Permit be revised to eliminate monitoring and reporting requirements that exceed Regional Board approved monitoring and implementation plans already submitted by the Task Force on behalf of its members to ensure that resources stay focused on those tasks that are most likely to restore beneficial uses at the lakes.</li> <li>4. The TMDL provisions in the MS4 Permit be revised to require the Permittees to develop BMP plans and schedules, consistent with documents submitted by the Task Force and approved by the Regional Board, that demonstrate implementation of the Waste Load Allocations as opposed to trying to measure compliance with the Waste Load Allocations directly using numeric effluent limits.</li> </ol>	A number of recommendations were made by the TMDL taskforce to implement TMDL provisions in the MS4 permits consistent with the federal regulations and the USEPA guidance. Most of these recommendations from the TMDL taskforces have been incorporated into the December 15, 2009 draft.
161	Riverside Board of Supervisors; 11-17-09, Pg.3	(WQBELs) implementing the TMDL WLA requirements	<p>The purpose of this letter is to specifically request that the Regional Board carefully exercise its discretion with regard to the incorporation of TMDL Waste Load Allocation (WLA) requirements in the Tentative Order. TMDL WLAs for Urban Runoff have been adopted for Permittee discharges to Canyon Lake, Lake Elsinore and the Middle Santa Ana River. Although the Permittees support the steps necessary to restore the beneficial uses of these important waterbodies, the Tentative Order is vague and ambiguous with regard to whether the Permit's Water Quality Based Effluent Limits (WQBELs) implementing the TMDL WLA requirements are to be construed as numeric effluent limits, narrative effluent limits or both. The Permittees are gravely concerned that this ambiguity exposes the Permittees to significant, unintentional and potentially irreversible, fiscal liability for non-compliance with the WQBELs. Without clarification of these requirements, the Permittees cannot support the Tentative Order.</p>	Please see revisions in the December 15, 2009 draft to the TMDL sections which provides the Permittees the option to comply with the WLAs through development and implementation of a comprehensive plan. A number of recommendations from the TMDL taskforces have been incorporated into the revised draft.
162	Riverside Board of Supervisors; 11-17-09, Pg.4		<p>The basis for our request follows:</p> <ol style="list-style-type: none"> <li>1) Although requiring direct compliance with the numeric WLAs may seem logical and appropriate, the TMDLs for these waterbodies were adopted based on limited science and preliminary information. Regional Board staff noted in their response to comments regarding the Middle Santa Ana River TMDL that economic analyses of the costs and feasibility of BMP implementation were deferred based on the expectation that the TMDL would be revised based on the work of the Storm Water Quality Standards Task Force .</li> </ol> <p>Compliance with both TMDLs was expected to result from the collection of additional data and science necessary to refine the TMDLs, the identification and development of new and innovative BMP technologies, and pending regulatory actions yet to be adopted. All of these facts demonstrate that adopting narrative WQBELs based on the adoption and enforcement of iterative BMPs programs is the appropriate measure of compliance, not the application of numeric WQBELs based on TMDL WLAs that were never intended to represent the regulatory "end point" for the TMDLs.</p>	Please see revisions in the December 15, 2009 draft to the TMDL sections which provides the Permittees the option to comply with the WLAs through development and implementation of a comprehensive plan. A number of recommendations from the TMDL taskforces have been incorporated into the revised draft (December 15, 2009 draft).

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163	Riverside Board of Supervisors; 11-17-09, Pg.4		2) Incorporating numeric WQBELs into NPDES MS4 Permits carries with it significant ramifications, including mandatory minimum penalties of \$3,000 per violation for non-compliance. Should the existing WLAs not be revised in a timely manner, the Permittees could be subject to unavoidable non-compliance, excessive and unavoidable fines, and third-party litigation. We would add that in the event of third-party litigation, it is inevitable that Regional Board staff themselves would be affected, due to the pressures of discovery.	The December 15, 2009 draft indicates that the final numeric water quality-based effluent limits become enforceable only if the Permittees fail to develop and implement a comprehensive plan to achieve WLAs by the compliance dates. For example, the final numeric water quality-based effluent limit for the MSAR Bacteria TMDL become enforceable on January 1, 2016 for dry weather conditions.
164	Riverside Board of Supervisors; Pg.4		3) Incorporating numeric WQBELs into the Permit may be irreversible. Federal Clean Water Act "anti-backsliding" requirements are very stringent. They effectively preclude relaxing effluent limits incorporated into NPDES permits unless very specific and limited conditions are met. The anti-backsliding provisions can preclude amending numeric effluent limits even if underlying water quality objectives and/or TMDL WLA requirements change. While it is not entirely clear that the anti-backsliding requirements would apply in this case - and Regional Board staff has argued that they would not - the Permittees are deeply concerned about the long-term risks they may incur under this scenario.	Comments noted. The anti-backsliding rules include important exceptions, including those outlined in CWA section 303(d)(4). While speculating on the exact operation of anti-backsliding rules without all the necessary facts is impossible, section 303(d)(4) does provide a procedure for obtaining an exception to the anti-backsliding limitations for the situations) raised.
165	Riverside Board of Supervisors; 11-17-09, Pg.5		4) The Regional Board has consistently supported the TMDL Task Force approach. However, numeric WQBELs may cause years of joint TMDL Task Force efforts to develop science and technology to address TMDL requirements to unravel. As an example, the Lake Elsinore/Canyon Lake TMDL Task Force has focused its efforts on implementation of innovative in-lake strategies based on biomanipulation that would directly address the impairments and restore beneficial uses. If numeric WQBELs are incorporated into the Tentative Order, the Permittees would likely be driven to divert resources intended to develop these strategies and fine-tune a workable, yet currently unproven, in-lake management strategies to a watershed-based engineering solution that can be used to directly demonstrate nutrient reductions required by the TMDL WLAs. This would be necessary as the TMDL WLAs are based on a 10 year-rolling average that takes effect in 2010. In effect, pressures to use limited resources to individually comply with the Permit's proposed numeric effluent limitations would override motivations to use those resources to jointly develop effective in-lake solutions.	The Regional Board continues to support the taskforce approach. Regional Board staff has carefully reviewed all the comments from the taskforces and other stakeholders and made appropriate changes to the TMDL sections of the draft Order (see the December 15, 2009 draft).
166	Riverside Board of Supervisors; 11-17-09, Pg.5		5) The WLAs are not sufficiently developed to be specified as numeric effluent limits. Numeric effluent limits are required to be specific to individual dischargers. The current WLAs are, instead, jointly assigned to NPDES MS4 Permittees, CalTrans, state and federal agencies and a myriad of construction and industrial stormwater permit holders. Even if the WLAs were subdivided and assigned to individual dischargers, it would not be possible to accurately measure compliance with numeric WLAs due to the sheer number of outfalls contained in these large watersheds, the number of dischargers that contribute flow to individual outfalls, and the variability of rainfall that results in discharges. Further, both this Tentative Order and the March Air Reserve Base Order No. R8-2009-0040, also scheduled for adoption on December 10, 2009, have each been assigned the entire Urban WLA. If the WLAs are expressed as enforceable numeric WQBELs, they are not consistent with the adopted TMDL, as implementation of the WQBEL would lead to a de facto exceedance of the allowable urban loads for Lake Elsinore and Canyon Lake. By contrast, if the WQBELs are expressed narratively, there are no issues as to the numeric accuracy of the WLAs assigned to each discharger.	A number of recommendations provided by the TMDL taskforce have been incorporated into the December 15, 2009 draft. Please note that numeric effluent limits are only effective if and only if a comprehensive plan to achieve compliance with the WLAs is not approved by the Regional Board by the compliance date. The draft Order specifies deadlines for the development and submission of the comprehensive plan for consideration by the Regional Board.



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167	Riverside Board of Supervisors; 11-17-09, Pg.6		6) The TMDL WLAs are inherently variable and thus subject to revision. The Lake Elsinore and Canyon Lake TMDL WLAs are dependent on land use. As the San Jacinto River watershed develops, urban WLAs are expected to increase as agricultural, open space and dairy WLAs decrease. Specifying numeric WQBELs based on the current WLAs would lock in late 1990 land use assumptions used to develop the WLA and ultimately place the Permittees in a situation of unavoidable non-compliance. The Regional Board would be forced to re-evaluate the TMDL, and re-open the Permit unnecessarily to ensure that the WLA were consistently appropriate to current land use distribution. If anti-backsliding applies, this is a fatal compliance problem that could ultimately preclude further development of the watershed.	A number of recommendations provided by the TMDL taskforce have been incorporated into the December 15, 2009 draft. The anti-backsliding rules include important exceptions, including those outlined in CWA section 303(d)(4). While speculating on the exact operation of anti-backsliding rules without all the necessary facts is impossible, section 303(d)(4) does provide a procedure for obtaining an exception to the anti-backsliding limitations for the situations) raised.
168	Riverside Flood Control; 11-23-09, pg 2.		Flexibility is particularly important to the municipalities in Riverside County in these times of financial hardship. The County and the municipalities within it have been particularly and seriously affected by the downturn in housing prices, construction activity, and employment, all of which have contributed to the loss of tax revenues. Notwithstanding such hardship, the Permittees remain committed to improving water quality and protecting beneficial uses in the receiving waters. By incorporating the TMDLs into the Tentative Order using narrative WQBELs based on enforceable iterative BMP implementation requirements (requirements which are consistent with the TMDL Implementation Plans), the Order would provide flexibility to the Permittees. On the other hand, the Permittees, faced with numeric WQBELs, will be driven to focus their monitoring and implementation efforts away from the innovative Task Force approach and toward individual compliance with the WLAs. Similarly, through application of anti-backsliding provisions, Permittees could be locked into WLAs that were intended to be revised in light of developing science,	In recognition of the current financial conditions and the cooperation from the TMDL taskforces, a number of recommendations provided by the TMDL taskforce have been incorporated into the December 15, 2009 draft.
169	Riverside Flood Control; 11-23-09, Attachment 1, pg 2.	Closing Summary	The requirements proposed in the Tentative Order, if adopted, will result in significant operational and fiscal impacts to the Permittees during a period of economic distress. As described in previous communications and Attachment 1 of our comments on the First Draft Tentative Order, the MS4 Permittees do not currently have revenues to support expanded compliance programs and significant revenue increases are not anticipated during the term of the Tentative Order. As a matter of prudent public policy, it is incumbent upon our respective organizations to recognize these limitations and provide for balance in establishing compliance requirements and programs.	Comment noted; where appropriate, changes have been made (see December 15, 2009 draft).
170		Permit Section II – Findings	a. The MS4 Permittees request that Table 5 be revised to add the Agricultural Pool and Milk Producers Council, consistent with the TMDL Task Force Agreement.	Agricultural pool and Milk Producers Council have been added to Table 5.
171		II.F.19	b. The MS4 Permittees request that Finding F.19 be revised as noted to ensure consistency between the TMDL Implementation Plan and the Tentative Order.	The TMDL sections have been revised; see December 15, 2009 draft.
172		II.K.3.b	c. The MS4 Permittees request that Finding K.3.b.iv be revised to ensure consistency between the TMDL Monitoring Plan and the Tentative Order.	The LE/CL TMDL monitoring program is now incorporated into the Consolidated Monitoring Program; see December 15, 2009 draft.
173	Riverside Flood Control; 11-23-09, Attachment 1, pg 3.	II.K.3.b.v	d. The MS4 Permittees request that Finding K.3.b.v recognize that the objective of the TMDL is to attain Water Quality Standards.	The objective of the MS4 program as well as the TMDLs is to attain Water Quality Standards in the receiving waters.
174	Riverside Flood Control; 11-23-09, Attachment 1, pg 4.	4) Section VI – Effluent Limitations	1) As addressed more fully in the Permittees' comments filed with Regional Board staff on October 8, 2009, the TMDLs address complicated issues that are not well understood and are based on incomplete and preliminary data, data which are being refined as the result of the work of task forces. It is therefore imperative that the TMDLs are implemented using the most flexible adaptive management policies allowed under federal regulations.	The revised TMDL language provides for an adaptive management program consistent with the federal regulations and the USEPA guidance. The Permittees are required to develop and implement a comprehensive plan designed to achieve compliance with the WLAs by the dates specified in the TMDLs. The Permit language has been revised to facilitate Permittees desire to apply for grant funds for some of the research projects related to

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175	Riverside Flood Control; 11-23-09, Attachment 1, pg 4.		2) The Tentative Order should be designed to continue to focus resources on regional management strategies and, with respect to the Lake Elsinore/Canyon Lake (LE/CL) TMDL, in-lake controls. The Tentative Order should require BMPs to be implemented in the watersheds to the maximum extent practicable, consistent with the requirements of Section 304(p) of the Clean Water Act, but should not divert resources to additional plans, studies, or other requirements beyond the TMDL Implementation Plans that would unduly interfere with the Permittees' ability to implement those plans and programs most likely to result in the attainment of beneficial uses. Further, by requiring additional control measures, plans and monitoring, the Regional Board may actually disqualify the Permittees' eligibility to pursue grants and other financial resources.	TMDLs and other projects. Some of the compliance dates are necessary to ensure that the Permittees are making reasonable progress towards achieving the WLAs by the dates specified in the TMDLs. The TMDL taskforce recognized that for the LE/CL TMDL, there are a number of options that must be considered to achieve the WLAs. The draft Order also recognizes these factors and the ongoing work by the TMDL taskforce; see the December 15, 2009 draft of the Order.
176	Riverside Flood Control; 11-23-09, Attachment 1, pg 4.		3) The Order should incorporate the TMDL Implementation Plan requirements by reference, so as to facilitate the work of the ongoing task forces to adaptively manage TMDL implementation. Hard wiring dates, monitoring stations and other requirements limits the MS4 Permittees' ability to make course corrections and/or adjust for failures that are expected when adaptively managing complex problems.	
177	Riverside Flood Control; 11-23-09, Attachment 1, pg 5.		4) A TMDL implementation approach based on: a. Calculating existing loads and updating load and waste load allocations (WLA) for each discharger/source based on the most current data available b. Developing tools and data that allow the dischargers to take credit for load reductions based on BMP implementation c. Development of pollutant trading plans and biological translators which allow the dischargers to take credit for participation and/or implementation of innovative and effective in-lake control systems d. Re-evaluation of the TMDLs, as appropriate, to ensure that it reflects the current state of science and knowledge regarding the river and lakes As written, the TMDL requirements in the Tentative Order impose additional studies, monitoring and other requirements that exceed the requirements of the TMDL Implementation Plans. Promoting additional watershed based monitoring and outfall- based compliance determinations divert Permittee resources from solving the actual beneficial use impairments. Such requirements force dedication of resources to determination of compliance with incomplete WLAs that were only established as placeholders pending collection of additional data.	
178	Riverside Flood Control; 11-23-09, Attachment 1, pg 5.		With respect to the LE/CL TMDL, the Permittees believe that controlling nutrients in the watershed alone will not result in restoration of beneficial uses in the lakes. Watershed-based nutrient controls only function during infrequent rain events, and can never be sufficient to control the volume of water, and resultant nutrient load, produced by large rain events. Proper management of the lakes will require BMPs that can function year-round and which can continually address the sources of impairment. In-lake management measures are likely to be the most successful, as they can control the underlying cause of impairments on a daily basis. Although some Permittees may be in a position to address their discharges through watershed-based compliance measures (e.g., due to limited jurisdictional area or their location in the watershed), it is expected that the majority of the affected MS4 Permittees will choose to focus resources on in-lake control measures to address TMDL requirements.	

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179	Riverside Flood Control; 11-23-09, Attachment 1, pg 5.		Promoting additional watershed-based compliance determinations will also weaken, and possibly destroy, the task force approach, as dischargers may be driven to argue over the sources of nutrients that are measured in outfall monitoring data. This additional level of monitoring was not required by the TMDL Implementation Plan. Evaluating compliance with WLAs through outfall based monitoring is both inconsistent with the TMDL Implementation Plan and technologically and economically infeasible. The watershed is very large and diverse. There are far too many outfalls to monitor economically and the outfall discharges themselves would not represent homogeneous sources. Nutrients measured at outfalls will typically represent the contribution of multiple TMDL dischargers that are not under the control of the Permittees, including state and federal agencies (schools, Caltrans, etc.) and agricultural and CAFO operations. In addition, the outfall may represent discharges from multiple Permittees. Thus, determining any individual MS4 Permittee's actual nutrient load from outfall monitoring data is technologically infeasible. The result of imposing additional outfall monitoring will still be the progress of the task force, as resources are diverted from addressing the actual impairments or developing more effective in-lake solutions.	
180	Riverside Flood Control; 11-23-09, Attachment 1, pg 6.		Alternatively, the proposal currently supported by the LE/CL TMDL Task Forces, using models to calculate discharger specific existing nutrient loads, and then determining compliance by allowing the dischargers to take credit for load reductions that result from BMP implementation, is a more effective way to ensure progress toward compliance with the TMDL. Monitoring data and models already required by the TMDL Implementation Plan can then be used to evaluate whether expected load reductions are being attained over time.	
181	Riverside Flood Control; 11-23-09, Attachment 1, pg 6.	Section VI.D.2.e	<p>Section VI.D.2.e requires the Permittees to develop and implement a Canyon Lake Sediment Nutrient Treatment Plan. This requirement is problematic:</p> <ul style="list-style-type: none"> <li>• Not all of the LE/CL Permittees are dischargers to Canyon Lake.</li> <li>• The requirement unnecessarily presumes that all the LE/CL Permittees will need to participate in nutrient/sediment control plan for Canyon Lake. It is entirely feasible that some Permittees (e.g., City of Riverside) may have special circumstances (such as limited jurisdictional area or their relative location in the watershed) that allow them to more cost-effectively address TMDL requirements via other BMP based approaches.</li> <li>• The requirement places the burden of developing this plan on the affected MS4 Permittees and overlooks the responsibilities of non-MS4 Permittee dischargers.</li> <li>• The TMDL did not require implementation of a nutrient/sediment control system in Canyon Lake. By mandating this system in the draft Order, the Regional Board is effectively disqualifying the Permittees from eligibility to pursue grants to offset the costs of development, implementation and operation of this system, which would otherwise not be required by an NPDES MS4 Permit.</li> </ul> <p>The Permittees request deletion of this provision.</p>	The Regional Board recognizes that there are number of options that are still being pursued by the LE/CL Permittees to achieve compliance with the LE/CL nutrient TMDLs. The December 15, 2009 revisions provide the flexibility needed to develop and implement these options through the comprehensive plan.

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182	Riverside Flood Control; 11-23-09, Attachment 1, pg 6	Section XI – Municipal Inspection Programs	The CAP, which is implemented by the County Environmental Health Department on behalf of the smaller cities in Riverside County, is a cost-effective mechanism to address the industrial and commercial inspection program requirements of the Tentative Order. Although the County and the larger cities, which encompass 73 percent of the population, implement comprehensive inspection programs, it is estimated that 95 percent of the facilities targeted by the Municipal Inspection requirement are addressed by the CAP and other existing programs. The MS4 Permittees have committed to more fully describe the CAP in the revised Drainage Area Management Plan and to specifically evaluate the need to develop or enhance inspection programs to address facilities that manufacture, transport or store pre-production plastics. Thus, the MS4 Permittees request that the Tentative Order be modified as set forth in the redline in Attachment 4.	As long as the CAP program meets the requirements specified in the draft Order for the municipal inspection programs, we have no objection to the Permittees using this program. The Permittees need to make sure that the CAP program covers the type of facilities that are included in the draft Order and the program is capable of examining urban runoff pollutant control measures at the facilities that are under the CAP program.
183	Riverside Flood Control; 11-23-09, Attachment 1, pg 6	Section XII.A.6	a. The MS4 Permittees recommend that Section XII.A.6 be revised as set forth in the Attachment 4 redline to prevent conflict with state drainage law (language attempting to prohibit flow unless certain conditions are met). Additionally, the proposed revisions focus the provision on the outcome as opposed to the method of compliance.	This provision has been revised to eliminate any conflict with the state drainage law; see revisions in the December 15, 2009 draft.
184	Riverside Flood Control; 11-23-09, Attachment 1, pg 6	XII.D.2.i	b. The MS4 Permittees request that Section XII.D.2.i be deleted and that Section XII.F be expanded, as set forth in the redline, to cover both public and private road projects.	Road projects are now addressed as a separate category (Section XII.F); however this section is for Permittee road projects. All road projects within new developments should be addressed through the WQMP for the new development.
185	Riverside Flood Control; 11-23-09, Attachment 1, pg 6	Section XII.D.3.a	c. The MS4 Permittees request that Section XII.D.3.a be deleted to remove the compliance standard of BAT/BCT, as Treatment Control BMPs are subject to the MEP standard, not the BAT/BCT standard. This revision is also consistent with the final Orange County NPDES MS4 Permit.	This section has been revised and is now consistent with the Orange County MS4 Permit.
186	Riverside Flood Control; 11-23-09, Attachment 1, pg 6	Sections XII.E.8.b.ii) and XII.E.8.d.iv)	d. The redline text attached as Attachment 5 proposes revisions to the HCOC requirements in Sections XII.E.8.b.ii) and XII.E.8.d.iv) to improve compliance feasibility and flexibility in a manner protective of receiving water quality and to be consistent with the Orange County NPDES MS4 Permit.	The HCOC section has been revised to improve compliance feasibility and to be consistent with the Orange County MS4 Permit.
187	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Section XII.F	e. Section XII.F has been modified in the Attachment 4 redline text to clarify that the Road Standards address both public and private road projects under the jurisdiction of the Permittees. Further clarifications were made to clarify that the Principal Permittee does not maintain road standards.	Please note that this section is only for Permittee road projects; other road projects should be covered under the WQMP for new developments or redevelopments.
188	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Appendix 3 – Section III.D	The MS4 Permittees request that the text following the first paragraph of Section III.D be eliminated. The additional text is not pertinent to this section of the Monitoring and Reporting Program and is duplicative of text contained in the Tentative Order. If the Board chooses to keep this section, the explicit text should be removed and replaced with references to the appropriate sections of the Tentative Order.	Duplicative provisions in Section III.D of the Monitoring and Reporting Program has been eliminated.

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189	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Appendix 3 – Section III.E.1.b.ii	The Permittees request that the phrase "to correlate land use and population changes" be deleted. Storm water data is highly variable and developing such correlations is beyond the capability and resources of the MS4 Permittees. The Permittees conducted such an analysis as part of the ROWD for the SMR Permit, it was a substantial and time consuming analysis – particularly when you consider it would need to be done separately for dry weather, wet weather and each of the more than 200 pollutants that we monitor. Such extensive research endeavors are best left to US EPA and university researchers.	The requirement to "correlate land use and population changes" has been revised.
190	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Appendix 3 – Section III.E.1.b.iii	The Permittees request that the comparison to the Industrial Permit Multi-sector benchmarks be deleted, as these benchmarks are not applicable to an NPDES MS4 Permit. The actual benchmarks are specific to each industrial discharge category and MS4 discharges are not consistent with the individual categories and would not provide useful comparison for urban runoff management. Further, the benchmarks are derivatives of the CTR objectives, which the Permittees are already required to evaluate. In addition, the Permittees request deletion of the CTR objectives, as they are not applicable to storm water.	Language in the permit has been modified; however, the EPA benchmarks remain. The CTR objectives, EPA benchmarks and other metrics provided here are for comparison purposes and these could provide useful information to determine the effectiveness of various control measures.
191	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Appendix 3 – Section III.E.1.b.v	The Permittees request that this section be revised to clarify that the "model" is intended to address conversion of grab sample data to mass loads and may be as simple as a spreadsheet – and use of a "model" may not provide more statistically reliable information than that provided by a spreadsheet. Further, the Permittees request deletion of the words "and monitoring data" from the sentence regarding GIS database management. The Permittees have monitoring locations in a GIS database, but do not maintain monitoring data itself in a GIS database. Development of such a tool would require an investment of several hundreds of thousands of dollars – resources that are and will not be available to the MS4 Permittees during the term of the Tentative Order. This requirement should be deleted as such a tool is not necessary to address the requirements of the Tentative Order. .	Comment noted; see revisions in the December 15, 2009 draft.
192	Riverside Flood Control; 11-23-09, Attachment 1, pg 7	Appendix 3 – Section II.E.3	The MS4 Permittees request a minor amendment to the second paragraph to clarify that nitrogen/TDS monitoring is applicable at the Core Monitoring Stations.	Comment noted; clarifying language to indicate that the nitrogen and TDS monitoring is applicable at the Core Monitoring Stations has been added (see revisions in the December 15, 2009 draft).
193	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – f) Table 1	The MS4 Permittees request deletion of the TMDL monitoring stations, as these stations are not part of the MS4 Permittees Core Monitoring Stations. These monitoring stations are currently monitored (or proposed to be monitored) by the LE/CL TMDL Task Force. The Permit already requires the MS4 Permittees to participate in the TMDL Monitoring Program.	Table 1 has been revised; see revisions in the December 15, 2009 draft.
194	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section III.E.8.g	The MS4 Permittees have requested minor revisions to this paragraph to clarify where Receiving Waters Monitoring Stations are to be abolished and the basis for selecting sites. Due to safety considerations and the difficulty of monitoring receiving waters sites during wet weather, the MS4 Permittees are only recommending one site on each River.	Appendix 3, Section III.E.8.g has been revised; see revisions in the December 15, 2009 draft.
195	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section III.E.8.h	The MS4 Permittees have requested revisions to this paragraph to clarify that the monitoring stations referenced here are the same monitoring stations contained in the CMP and referenced in Section E.1 and that this is not a new and separate monitoring requirement.	Table 1 and Section III.E.8.h have been revised and clarifications have been added; see revisions in the December 15, 2009 draft.
196	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section III.G	The MS4 Permittees have proposed clarifying revisions to this paragraph. The MS4 Permittees are requesting additional flexibility in the language so that they may implement programs that will be consistent with upcoming recommendations from the Southern California Storm water Monitoring Coalition.	Revisions have been made to accommodate recommendations from the Southern California Storm water Monitoring Coalition.

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197	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section III.J	The MS4 Permittees are requesting deletion of this provision, as it is duplicative of the Receiving Waters Limitations requirements and creates a new and unnecessary fiscal burden. The MS4 Permittees are already spending \$1.2 million in capital costs and more than \$100,000 over 5 years for the monitoring of the District's LID Facility. These expenditures are in addition to the funds dedicated to several monitoring projects, including BMP testing, jointly conducted with the SMC. Since this provision is duplicative of those efforts, and the cost of implementing this program diverts resources from critical water quality issues, it should be deleted.	We agree that the requirements in Section J are duplicative are addressed elsewhere in the Order. So this section has been deleted; see the December 15, 2009 draft.
198	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section IV.A.1.	The additional text beyond the first sentence in this provision is duplicative of, and potentially contrary to, Section II.A. The MS4 Permittees request that this additional text be deleted.	The duplicative provisions have been eliminated; see the December 15, 2009 draft.
199	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section IV.B.2.f	The MS4 Permittees are requesting a minor amendment to this section to clarify the purpose of the provision	Clarifications have been added to this section of the MRP.
200	Riverside Flood Control; 11-23-09, Attachment 1, pg 8	Appendix 3 – Section IV.B.4	The last sentence should be deleted, as SWAMP compliance is addressed in Section II.C of the Monitoring and Reporting Program. Further, the Regional Board has already agreed to implement the regional reporting requirements instituted by the Southern California Storm water Monitoring Coalition.	This section has been revised to be consistent with the State Board's "Standardized Data Exchange Format".
201	Riverside Flood Control; 11-23-09, Attachment 1, pg 9	Appendix 4 – Low Impact Development (LID)	Comprises a set of technologically feasible and cost-effective approaches and practices that are designed to reduce runoff of water and Pollutants from the site at which they are generated. By means of infiltration, evapotranspiration, biotreatment, and reuse of rainwater, LID techniques manage water and water Pollutants at the source.	The definition for LID has been revised; see the December 15, 2009 draft.
202	Riverside Flood Control; 11-23-09, Attachment 7, pg 15-21	Appendix 4 – Effluent Limits	Can be either numeric or narrative; water quality-based or technology-based. Generally, NPDES MS4 Permits require implementation of BMPs, identified as narrative water quality-based effluent limitations, rather than as numeric effluent limits. USEPA recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal storm water discharges. See, e.g., 40 C.F.R. 122.44(k); EPA's Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 Fed. Reg. 43761 (Aug. 26, 1996); Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (EPA Memo, Nov. 22, 2002); and EPA's TMDL to Storm Water Handbook (Draft) (Nov. 2008). See also SWRCB Order No. 97-03-DWQ, NPDES General Permit/Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Apr. 17, 1997).	Federal regulation at 40 CFR 122.44(d)(1)(B)(vii) require that NPDES permits be consistent with the assumptions and requirements of the approved TMDLs. In the November 22, 2002 USEPA guidance and in its comment letter on this draft Order (dated October 8, 2009), USEPA outlined options for expressing the WLAs either as BMP-based WQBELs or as numeric WQBELs. The revised draft is consistent with these guidelines and regulations. See revised language in the December 15, 2009 draft.

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203	Riverside Flood Control; 11-23-09, Attachment 8, pg 22-26	Attachment 7 –TMDLs and WQBELs	The MS4 Permittees believe that the approach of implementing the TMDLs with narrative water quality based effluent limitations (WQBELs) based on the TMDL Implementation Plan and iterative best management practices (BMPs) designed to attain the WLAs is consistent with the TMDL. This is an approach that would achieve the goal of ensuring that the Order contains enforceable benchmarks for the attainment of the WLAs. Use of this approach is also critical as the WLAs for MSAR and LE/CL TMDLs are preliminary and expected to be revised based on additional data, modeling and regulatory actions. Further, the LE/CL TMDL WLA is subject to land use changes, and as such is explicitly variable. Over time, the Urban WLA is expected to increase as agricultural, CAFO and Open Space WLA decrease. Incorporating the WLA as numeric effluent limits would place increasingly stringent requirements on the MS4 Permittees unless annual updates to the TMDL and this Permit were conducted.	Federal regulation at 40 CFR 122.44(d)(1)(B)(vii) require that NPDES permits be consistent with the assumptions and requirements of the approved TMDLs. In the November 22, 2002 USEPA guidance and in its comment letter on this draft Order (dated October 8, 2009), USEPA outlined options for expressing the WLAs either as BMP-based WQBELs or as numeric WQBELs. The revised draft is consistent with these guidelines and regulations; see the December 15, 2009 draft.
204			Incorporating Numeric Effluent Limits into the draft Order would effectively be an act of state discretion in excess of federal requirements. As such, the Regional Board would be obligated to consider the factors set forth in California Water Code Section 13241. City of Burbank v. State Water Resources Control Board (2005), 35 Cal. 4th 613. Because the TMDLs were based on preliminary data with explicit recognition that they would be revised, the WLAs cannot be broken down into discharger specific WLAs, and the true economic costs of complying with the current WLAs were never calculated or assessed; any reasonable person could presume that the existing TMDL WLA are infeasible. Finally, the WLA for the LE/CL TMDL is dependent on land use distribution. As land use changes, so will the allocation of load between TMDL dischargers. This will require constant update of the TMDL and this Permit if the TMDL WLA is incorporated as numeric effluent limits. It is therefore inappropriate to establish numeric effluent limits based on the existing LE/CL or MSAR TMDL WLA and we therefore support the Regional Board's position to incorporate the Water Quality Based Effluent limits based on a BMP based approach to WLA compliance.	Federal regulation at 40 CFR 122.44(d)(1)(B)(vii) require that NPDES permits be consistent with the assumptions and requirements of the approved TMDLs. In the November 22, 2002 USEPA guidance and in its comment letter on this draft Order (dated October 8, 2009), USEPA outlined options for expressing the WLAs either as BMP-based WQBELs or as numeric WQBELs. The revised draft is consistent with these guidelines and regulations.
205		Attachment 8 - WQBEL Policy Issues	Flexibility is particularly important in these times of public and private economic distress to ensure that the remaining resources are prudently utilized. Notwithstanding the economic crises, the Permittees remain committed to managing urban runoff quality to protect the beneficial uses of the receiving waters to the extent technically and financially feasible. By incorporating the TMDLs into the Tentative Order as enforceable iterative BMP implementation requirements (requirements which are consistent with the TMDL Implementation Plans) as proposed by the Permittees in the attachment, the Order would provide required flexibility to adaptively manage TMDL implementation. Faced with numeric effluent limitations, the Permittees will otherwise be required to focus monitoring and implementation away from the innovative Task Force approaches and, through application of anti-backsliding provisions, be locked into WLAs that were intended to be revised in light of developing science, changing regulations, changing land use and emerging technologies. Such a diversion would result in a waste of resources already invested in the work of the Task Forces by not only the Permittees, but also by the Regional Board.	Comment noted. Based on comments received from the USEPA, the TMDL Taskforces and other stakeholders, a number of provisions related to TMDL implementation have been revised; see the December 15, 2009 draft. The revised language provides the flexibility that the Permittees have requested.

# Riverside County MS4 Tentative Order No. R8-2010-0033

## Comments/Responses 2nd Draft MS4 Permit October 22, 2009

206		<ul style="list-style-type: none"> <li>• Current WLA was intended to be placeholder values subject to revision by future Regional Board action and as changes to land use occurred;</li> <li>• The required economic analysis of WLA feasibility was deferred until such time that sufficient data and/or other expected, yet pending, regulatory actions occurred that would amend the TMDL ; Permittee data provided to Regional Board staff at the Lake Elsinore/Canyon Lake TMDL adoption indicated the potential costs of watershed based BMP compliance at several billion dollars; and</li> <li>• The WLA are not properly specified at a discharger-specific level.</li> </ul> <p>It has been our experience that the Regional Board staff has advocated adaptive management and regulatory flexibility to resolve complex water quality problems. However, the requirements proposed in the Tentative Order preclude implementation of adaptive management and are inconsistent with the federal regulations, US EPA Headquarters and State Water Resources Control Board policy, and the recent NPDES Permit adopted by the San Francisco Bay Regional Water Quality Control Board. Further, the WLAs have not been in a manner that would support establishment of numerical effluent limitations.</p> <p>The Permittees request that the Regional Board exercise its discretion and revise the Tentative Order to incorporate the revisions proposed by the Permittees in Attachment 4, which clearly express the narrative Water Quality Based Effluent Approach. These revisions are consistent with federal and state law and policy, and consistent with the requirement of the State Board, that TMDL incorporation not be an "academic" exercise. Given the ramifications of this decision before you, the Permittees would recommend that you support this approach even over possible objections by staff and staff representatives of US EPA Region IX.</p>	<p>Based on comments received from the USEPA, the TMDL Taskforces and other stakeholders, a number of provisions related to TMDL implementation have been revised; see the December 15, 2009 draft.</p>
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